Supreme Court, U.S.
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No. 96-177

In the
Supreme Court of the United States
October Term, 1995

R. RAY SINGLETON,

Petitioner,

vs.

CHRIST THE SERVANT EVANGELICAL LUTHERAN CHURCH, and THE ST. PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Respondents.

JEREMIAH OLSON,

Petitioner,

vs.

LUTHER MEMORIAL CHURCH, AND THE ST. PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

RESPONDENT THE SAINT PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

R. Ray Singleton v. Christ the Servant Evangelical Lutheran Church and The Saint Paul Area Synod of the Evangelical Lutheran Church in America

I.

Whether the Minnesota Court of Appeals properly determined that Petitioner Singleton's claims for tortious interference with contract and breach of implied covenant of good faith and fair dealing are constitutionally barred by the First Amendment?

II.

Whether the Minnesota Court of Appeals properly affirmed summary judgment in favor of the Saint Paul Area Synod where the Synod's alleged defamatory statement was conditionally privileged and Petitioner Singleton failed to present evidence of malice?

Jeremiah Olson v. Luther Memorial Church and The Saint Paul Area Synod of the Evangelical Lutheran Church in America

I.

Whether the Minnesota Court of Appeals properly determined that Petitioner Olson's claims of tortious interference with contract and defamation are constitutionally barred by the First Amendment?

II.

Whether the Minnesota Court of Appeals properly determined that Minnesota does not recognize a cause of action for implied covenant of good faith and fair dealing in employment disputes?

PARTIES TO THE PROCEEDINGS

Pursuant to Supreme Court Rule 29.6, Respondent The Saint Paul Area Synod of the Evangelical Lutheran Church in America, states that it is a Minnesota non-profit corporation which has no parent or subsidiary company.

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On Petition for a Writ of Certiorari
to the Minnesota Court of Appeals

RESPONDENT THE SAINT PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, The Saint Paul Area Synod of the Evangelical Lutheran Church in America, respectfully requests this Court deny the petition for writ of certiorari of R. Ray Singleton and Jeremiah Olson which seeks review of the opinions issued in these cases by the Minnesota Court of Appeals.

OPINIONS BELOW

R. Ray Singleton v. Christ the Servant Evangelical Lutheran Church and The Saint Paul Area Synod of the Evangelical Lutheran Church in America, Ramsey County District Court No, C6-94-5824, Order and Memorandum, April 28, 1995 is contained in Petitioner's Appendix at A-1. The Minnesota Court of Appeals decision in R. Ray Singleton v. Christ the Servant Evangelical Lutheran Church and The Saint Paul Area Synod of the Evangelical Lutheran Church in America, is reported at 541 N.W.2d 606 (Minn. Ct. App. 1996) and contained in the Petitioner's appendix at B-1. The unpublished Minnesota Supreme Court Order dated March 19, 1996, denying Petitioner Singleton's petition for review is contained in the Petitioner's Appendix at C-1.

Olson v. Luther Memorial Church and The Saint Paul Area Synod of the Evangelical Lutheran Church in America, Ramsey County District Court Number C6-94-8853, Order and Memorandum, June 27, 1995, is contained in Petitioner's Appendix at D-1. Olson v. Luther Memorial Church and The Saint Paul Area Synod of the Evangelical Lutheran Church in America, CO-95-1623, Minn. Ct. App. February 20, 1996, is an unpublished decision of the Minnesota Court of Appeals and contained in the Petitioner's Appendix at E-1. The unpublished Minnesota Supreme Court Order dated March 19, 1996, denying Petitioner Olson's petition for review is contained in the Petitioner's Appendix at E-1.

JURISDICTION

This Court cannot properly exercise jurisdiction under 28 U.S.C. § 1257 over the arguments presented in sections III and IV of the Petitioners' petition for writ of certiorari as these issues were not presented to or considered by the Minnesota Courts. In addition, this Court may not properly exercise jurisdiction over Singleton's defamation claim or Olson's implied covenant of good faith and fair dealing claim as they do not meet the requirements of 28 U.S.C. § 1257(a).

28 U.S.C. § 1257(a) confers jurisdiction to this Court only over the issues addressed by the Minnesota Court of Appeals relating to the Establishment Clause of the First Amendment.

CONSTITUTIONAL PROVISIONS INVOLVED[1]

The First Amendment of the United States Constitution:

> Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

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[1] Petitioners also include reference to the Fifth Amendment and the Fourteenth Amendment. As noted, these issues were not raised before either the trial court or the Minnesota Court of Appeals and are not properly before this Court.

STATEMENT OF THE CASE

Background of the Evangelical Lutheran Church in America and its Synods[2]

The Evangelical Lutheran Church in America ("ELCA") began operating as a religious organization on January 1, 1988. The ELCA is governed by its constitutions, bylaws and resolutions.

The Synods and the congregations each adopt their own constitutions which are modeled after constitutions provided by the ELCA. Those documents provide guidance, direction and assistance to the ELCA, synods and congregations in their search for the understanding of the nature of the Lutheran church.

Each individual congregation affiliated within a Synod is largely autonomous. Congregations have considerable freedom to conduct their own ministries and to hire and fire their own staffs.

The ordained ministry of the ELCA is carried on primarily by pastors employed by congregations. According to the constitution:

> A pastor as an ordained minister of this church shall be a person whose commitment to Christ, soundness in the faith, aptness to preach, teach, and witness, and educational qualifications have been examined and approved in the manner prescribed in the documents of this church; who has been properly called and ordained; who accepts and adheres to the Confession of Faith of

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[2] Both Singleton and Olson initiated claims against The Saint Paul Area Synod. The Synod provides a short background on the Evangelical Lutheran Church of America and the Synod for the Court's reference in both cases.

this church; who is diligent and faithful in the exercise of the ministry; and whose life and conduct are above reproach. . . .

A Pastor's call

When a congregation affiliated with the ELCA searches for a new pastor, it may "call" any of the 17,000 pastors on the ELCA clergy roster. A letter of call is essentially an ecclesiastical offer of employment. The call may be extended for an indefinite or a stated period of time. The call continues as long as a mutual agreement exists between the pastor and the congregation. In the letter of call, the congregation sets forth the duties and responsibilities it expects of the pastor as well as a statement of the congregation's financial and other commitments to the pastor. A pastor may freely accept or reject a letter of call.

To facilitate a congregation's search for a pastor and a pastor's search for a new call, the Synod typically acts as a "matchmaker" in the call process. A pastor who is searching for a new call usually notifies the Synod. A congregation with a vacancy also notifies the Synod, and representatives of the Synod meet with leaders of the congregation to help assess the congregation's needs. The Synod provides the congregation with names of pastors who appear to meet those needs.

The congregation itself decides whether to interview or call candidates suggested by the Synod. The final decision whether to issue a letter of call to a particular candidate is made by vote of the members of the congregation, not the Synod. The Synod has no authority to force a congregation to extend a call to a pastor; prevent a congregation from extending a call to a pastor; or force a pastor to accept or reject a call.

The relationship between pastor, congregation and synod.

A pastor of an ELCA congregation is paid by the congregation, out of the congregation's own funds, in an amount and at intervals determined by the congregation. Although some synods provide pastor salary guidelines, those guidelines are not binding. Pastors may be paid more than the suggested guidelines, and others may be paid less. The congregation determines what benefits the pastor will receive upon accepting a congregation's call.

A pastor's admission to the ELCA clergy roster requires an ordination, which is a prescribed ecclesiastical function. However, no one can be ordained a pastor of the ELCA unless he or she first receives and accepts a call from a congregation. Being ordained merely connotes that one has a "ecclesiastical license" to act as a pastor within the ELCA; it does not guarantee employment as a pastor.

The Synod is authorized to initiate ecclesiastical disciplinary proceedings if, for example, the pastor preaches in conflict with the faith confessed by the ELCA or commits certain types of serious misconduct. The Synod cannot terminate a pastor's employment with the church; only the congregation has the authority to terminate a pastor's employment.

The Synod's primary role in the Lutheran church is to provide "pastoral care" for the congregations and pastors in its territory. To fulfill this role, the Synod nurtures and supports the congregations and lay leaders; seeks and recruits qualified pastors; provides pastoral care and guidance; and provides support for the pastors on the clergy roster.

A synod's bishop acts as a "pastor to the pastors". This role includes providing ecumenical guidance and encouragement to the pastor; developing new ministries or assisting in the conclusion of others; providing leadership and

encouragement to the pastors; and assisting pastors in carrying out their ministries.

R. Ray Singleton - Background Facts

Singleton began his work as pastor of Christ the Servant on August 18, 1987, when the council and congregation extended him a call. Christ the Servant is a congregation within the jurisdiction of the Saint Paul Area Synod of the Evangelical Lutheran Church in America (the "Synod"). Bishop Lowell Erdahl was the presiding bishop at all relevant times.

Singleton experienced conflicts and personality differences with church members within his first year at Christ the Servant. In addition, during Singleton's tenure, Christ the Servant experienced financial difficulties and the church was required to reduce Singleton's salary in 1993 to make its mortgage payments.

On November 19, 1993, Singleton informed Bishop Erdahl that he must leave Christ the Servant and would do so if he found a another call.

In December 1993, concerned members of the congregation held "Task Force" meetings to investigate the problems at Christ the Servant. In part, the task force recommended that Singleton be relieved of administrative duties to enable him to resume his duties as spiritual leader and that a meeting be arranged to allow Singleton to meet with former members and disgruntled present members to resolve their differences. There were no Synod representatives at the task force meetings.

The President of Christ the Servant personally wrote Singleton in January 1994 indicating the church could not afford to pay its mortgage and his salary, and therefore, he

should resign. Singleton never returned to Christ the Servant after January 11, 1994.

Singleton Procedural History

Singleton initiated this action against respondents on April 8, 1994, alleging the following causes of action against the Synod: 1) tortious interference with employment; 2) implied covenant of good faith and fair dealing; and 3) defamation.

Singleton asserts in his Statement of the Case that he asserted a breach of contract claim against the Synod. This statement is misleading. The Ramsey County District Court and the Minnesota Court of Appeals did not address a breach of contract claim against the Synod. Singleton acknowledged no breach of contract claim existed against the Synod prior to the trial court's ruling.

The Synod brought a motion for summary judgment on February 28, 1995, before the Honorable Kathleen Gearin of the Ramsey County District Court on the basis that Singleton's claims are barred by the Establishment and Free Exercise Clauses of the First Amendment of the United States Constitution. On May 2, 1995, judgment was entered in the Ramsey County District Court granting both the Synod's and Christ the Servant's motions for summary judgment on the basis that the relationship between Singleton and respondents was "basically a religious one", and therefore, the claims are constitutionally barred from review.

Singleton appealed the trial court's Order. The Minnesota Court of Appeals affirmed the trial court, holding Singleton's claims for tortious interference with contract and implied covenant of good faith and fair dealing are constitutionally barred and that the alleged defamatory statements made by the Synod are conditionally privileged.

Jeremiah Olson - Background Facts

Luther Memorial Church ("Luther Memorial") extended Olson a Letter of Call on July 1, 1990. Olson accepted Luther Memorial's call and began work on August 1, 1990, even though he had concerns that his salary was below Synod guidelines.

Luther Memorial is a congregation within the jurisdiction of the Saint Paul Area Synod of the Evangelical Lutheran Church in America. Bishop Lowell Erdahl was the presiding bishop at all relevant times.

During the 1991-92 year, the Luther Memorial finance committee approved a wage freeze for all church employees due to the congregation's financial difficulties.

By December 1991, Olson determined he was open to a call at another congregation, in part, because he was experiencing personality conflicts with Luther Memorial's senior pastor. During a December 1991 meeting, Bishop Erdahl told Olson he was being "obsessive/compulsive" about his continuing conflict with the senior pastor.

On April 25, 1992, Olson wrote the Luther Memorial Support Committee that he felt his position at Luther Memorial was "threatened". At a May meeting, members of the committee asked Olson to resign. No Synod representative was present at that meeting.

On October 18, 1992, Luther Memorial held its annual congregational meeting. During the meeting, a motion was made to eliminate Olson's Assistant Pastor position due to financial shortages. The resolution was introduced and approved. Bishop Erdahl was not present at the meeting.

Olson gave his last sermon at Luther Memorial on October 25, 1992. Olson left the pulpit in the middle of the sermon and never returned to the church.

Olson Procedural History

On June 24, 1994, Olson initiated this action against Luther Memorial, and the Saint Paul Area Synod. Appellant alleges only the following causes of action against the Synod: 1) tortious interference with employment; 2) implied covenant of good faith and fair dealing; and 3) defamation.

Olson asserts in his Statement of the Case that he asserted a breach of contract claim against the Synod. This statement is misleading. The Ramsey County District Court and the Minnesota Court of Appeals did not address a breach of contract claim against the Synod. Olson acknowledged no breach of contract claim existed against the Synod prior to the trial court's ruling.

The Respondents brought a motion for summary judgment before the Honorable Allan R. Markert of the Ramsey County District Court on May 16, 1995, on the basis that Olson's claims are barred from review by the Establishment and Free Exercise Clauses of the First Amendment of the United States Constitution and that Olson failed to present specific facts showing a genuine issue of material fact in support of his claims. Judgment was entered on July 3, 1995, in the Ramsey County District Court granting the Respondents' motions for summary judgment.

Olson appealed the trial court's order. The Minnesota Court of Appeals affirmed the trial court's order in favor of the Synod on the basis that Olson's claims for tortious interference with contract and defamation were constitutionally barred by the First Amendment and that Minnesota does not recognize a cause of action for implied covenant of good faith and fair dealing in employment disputes.

REASONS FOR DENYING THE WRIT

I. PETITIONERS FAILED TO PETITION THIS COURT TO REVIEW THE CLAIMS AGAINST THE SYNOD.

Although Petitioners purport to petition this Court for review of their claims against the Synod, a careful reading of the Petition makes clear Petitioners seek review of their contract claims against the respective churches and not the claims against the Synod. Rather, Petitioners attempt to group all of the claims against the respective churches and the Synod together.

The claims against the Synod are separate and distinct from the claims against either Church. The claims against the Synod include only: 1) tortious interference with contract; 2) defamation; and 3) breach of implied covenant of good faith and fair dealing.[3] No where in the Petitioners' arguments do you find reference to these claims. On page 8 of the Petition under "Reasons for Granting the Writ", Petitioners state the "question before the Court is whether the employment contracts of a church are enforceable." This theme resounds throughout the Petition (See page 12, "Neutral Principles Doctrine Allows the State of Minnesota to Recognize a Breach of Contract Claim by a Pastor against a Church"; page 14, "Neutral Principles Doctrine Allows the State of Minnesota to recognize Tort Claims by a Pastor against a Church"; page 16, civil courts retain jurisdiction to hear non-doctrinal contract disputes.)

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[3] Although petitioners pled claims of breach of contract against the Synod initially in their Complaints (see Petition, pg. 6 and 8), they later recognized no such cause of action existed against the Synod. The only claims against the Synod reviewed by the lower courts are the three listed.

Petitioners have given this Court no reason to review the claims asserted against the Synod.

II. SOME OF PETITIONERS' CLAIMS WERE DISMISSED ON THE BASIS OF MINNESOTA LAW AND PRESENT NO FEDERAL QUESTIONS, AND THUS, THERE IS NO REASON FOR THIS COURT TO REVIEW THE ISSUES FURTHER.

Petitioners mischaracterize the Minnesota Court of Appeals decisions to this Court by presenting an all encompassing statement that the Court of Appeals "based its decisions in both cases on the Establishment Clause of the United States Constitution."[4] That statement is patently false and misleading -- again, the result of Petitioners' presentation of their claims as one.

In Singleton, the court of appeals ruled the trial court properly granted the Synod summary judgment on the defamation claim because the alleged defamatory statements were conditionally privileged and there was no evidence of malice. The Court of Appeals never reached the issue of whether the claim was barred by the First Amendment.

In Olson, the court of appeals affirmed the trial court's order for summary judgment as it related to Olson's implied covenant of good faith and fair dealing claim because Minnesota does not recognize this cause of action. Again, the dismissal was not based upon the First Amendment.

Since the above dismissed claims do not present federal questions and were decided strictly upon established Minnesota law, this Court has no jurisdiction under 28 U.S.C. § 1257(a) to review them.

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[4] Petition, pg. 8.

III. THE MINNESOTA COURT OF APPEALS PROPERLY FOUND THE REMAINDER OF PETITIONERS' CLAIMS CONSTITUTIONALLY BARRED BY THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

The First Amendment of the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

U.S. Const. amend. I. The First Amendment has long been interpreted to guarantee that the government may not establish any religion through government action, or excessively entangle government (including the courts) with the free exercise of religion. Serbian Eastern Diocese v. Milivojevich, 426 U.S. 696 (1976).

The court of appeals acknowledged courts may intervene in disputes between church members through the application of "neutral principles" of law. Jones v. Wolf, 443 U.S. 595, 603 (1979)(emphasis supplied). This Court defines a "neutral principle" of law as any method that "relies exclusively on objective, well-established concepts of . . . law familiar to lawyers and judges," and that "promises to free civil courts completely from entanglement in questions of religious doctrine, polity and practice." Jones, 443 U.S. at 603.

However, the Jones court conceded that "if in such a case the interpretation of the instruments of [property] ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issues by the authoritative ecclesiastical body." Id. at 604 (citing Milivojevich, 426 U.S. at 709). The application of "neutral principles" may never be used in any manner that may

infringe upon the spheres of church autonomy. Jones, 443 U.S. at 602.

Petitioners continue to rely upon Piletich v. Deretich, 328 N.W.2d 696 (Minn. 1983) in support of their position that this case can be decided on "neutral principles" of law. The lower courts properly found petitioners reliance was misplaced. Piletich addressed a property dispute, not the interaction between a Synod and one of its pastors. The issues there were determined by interpreting legal concepts of trust and property law not, for example, the meaning of "pastoral care". Moreover, the court of appeals stated that "neutral principles" could not be applied because "judicial review of Singleton's claims .. would require an evaluation of scripture, doctrine and moral principles."

Here, the Minnesota Court of Appeals followed Milivojevich, and determined the courts would necessarily become entangled in the religious controversy between petitioners and the Synod if the cases were further reviewed. The result reached by the court of appeals is consistent with the decisions of this Court, as well as other federal decisions which restrict a court's intrusion into issues relating to a religious organization's relationship with one of its pastors. See, e.g., Young v. N. Illinois Conf. of United Methodist Church, 21 F.3d 184, 187 (7th Cir. 1994)(plaintiff's claims of race and gender discrimination dismissed because "civil court review of ecclesiastical decisions of church tribunals . . . are in themselves an 'extensive inquiry' into religious law and practice, and hence forbidden by the First Amendment" (emphasis in original)); Lewis v. Seventh Day Adventists Lake Region Conference, 978 F.2d 940, 942 (6th Cir. 1992)("civil court jurisdiction over a ministerial employment dispute [is] impermissible because such state intervention would excessively inhibit religious liberty"); Scharon v. St. Luke's Episcopal Presbyterian Hospitals, 929 F.2d 360, 363 (8th Cir.

1991) (priest's discrimination claims dismissed because "[i]t is not only the conclusions [of the court] which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry."); Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 1354, 1356-1357 (D.C. Cir. 1990) (evaluation of the gifts and graces of a minister must be left to ecclesiastical institutions); Natal v. Christian and Missionary Alliance, 878 F.2d 1575, 1576 (1st Cir. 1989) (minister's wrongful termination suit dismissed because "civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice"); McClure v. Salvation Army, 460 F.2d 553, 558-59 (5th Cir. 1972)(matters such as selecting a minister, determination of a minister's salary, place of assignment, and the duty a minister is to perform, are all matters of church administration and government, and thus, are barred from review).

The Minnesota Court of Appeals decisions are also consistent with other Minnesota decisions addressing similar disputes. See, e.g., Black v. Snyder, 471 N.W.2d 715, 720 (Minn. Ct. App. 1991), review denied (Minn. August 29, 1991); Geraci v. Eckankar, 526 N.W.2d 391 (Minn. Ct. App. 1995), review denied (Minn. Mar. 14, 1995), cert. denied, 116 S.Ct. 75 (1995); Basich v. Board of Pensions (ELCA), 540 N.W.2d 82 (Minn. Ct. App. 1995), review denied, (Minn. January 25, 1996), cert. pending. Further review is not warranted.

A. Singleton's claims of tortious interference with contract and implied covenant of good faith and fair dealing were properly dismissed.

1. Tortious Interference with Contract.

In Minnesota, a claim for tortious interference with an employment contract exists where someone "intentionally and

improperly interferes" with a contract. Nordling v. Northern States Power Co., 478 N.W.2d 498, 506 (Minn. 1991). To recover for "tortious interference" a party must prove: 1) the existence of a contract; 2) the alleged wrongdoers knowledge of the contract; 3) intentional procurement of a breach; 4) without justification; and 5) damages resulting therefrom. Royal Realty Co. v. Levin, 244 Minn. 288, 292, 69 N.W.2d 667, 671 (1955).

The court of appeals in Singleton accurately held that in order to analyze the justification element of the cause of action, a court would have to determine whether the Synod acted reasonably. Such an analysis would require a court to determine the "pastoral role" of a bishop in the call process, question the decisions of the bishop and his staff, review the relationship between the Church and the Synod, interpret the ELCA constitution, and determine the Synod's obligations and authority to settle disputes with its member churches. B-14. The court of appeals found such review impermissible.

2. Implied Covenant of Good Faith and Fair Dealing.

The court of appeals properly noted that Minnesota has not recognized a claim for implied covenant of good faith in employment contracts. Hunt v. IBM Mid-America Employees Fed. Credit Union, 384 N.W.2d 853, 858 (Minn. 1986). The court concluded judicial inquiry into Singleton's claim would necessarily "entangle the court in the internal affairs" of the Synod. B-12. Petitioner Singleton has presented nothing to persuade this Court that the court of appeals improperly interpreted Minnesota law on this claim.

Reviewing this claim would require the Court to determine the level of pastoral care a bishop is required to give each pastor. To do so, a civil court would need to scrutinize the laws and constitution of the ELCA and the Synod, and the

ecclesiastical conduct of the bishop and his assistants. The ELCA constitution sets forth the Synod's relationship with its congregations and pastors, and further establishes the limited authority of the Synod. The bishop and his staff are limited to an ecclesiastical role in matters of the congregation. Most importantly, further review would, in effect, allow the court to define the relationship between the Synod and its pastors. The court of appeals in Singleton properly determined such review would unnecessarily entangle the court in the Synod's internal affairs. Further review is not necessary.

B. Olson's claims of tortious interference with contract and defamation were properly dismissed.

1. Tortious Interference with Contract.

The court of appeals properly determined that review of Olson's claim for tortious interference would require a "searching inquiry" into the Synod's motives, disciplinary and discharge procedures, and thus, could not be reviewed under the First Amendment.

Olson alleged the following Synod actions constituted a basis for his interference with employment claim: 1) failing to exercise "appropriate pastoral care and duties in accordance [with] the constitution"; 2) failing to offer him more aid and assistance; 3) failing to inform the church that their resolutions were not "in order" and against the Constitution, 4) failing to remind the congregation to follow the Constitution, 5) requesting that he resign from Luther Memorial, 6) suggesting that he undergo counseling, and 7) keeping his name out of the call process.

A review of Olson's allegations show they all center directly on his relationship with the Synod and its staff. Olson now questions nearly every action the Synod took when addressing his concerns about his employment relationship

with Luther Memorial. The "pastoral" relationship between the Synod and Olson is derived from the ELCA Constitution. The "pastoral care" Olson questions is the crux of the relationship between a Pastor and the Synod. The court of appeals properly determined review of this relationship is impermissible.

2. Defamation claim.

The court of appeals found that review of Olson's defamation claim against the Synod would require review of statements which relate to the Synod's "reasons and motives for making employment decisions", and thus, were barred by the First Amendment.

Olson claimed the Synod defamed him when Bishop Erdahl stated he was "obsessive-compulsive" about his conflict with the senior pastor of the Church. This observation was made during a meeting between Bishop Erdahl and Olson concerning Olson's desire to obtain another call. Olson's interest in another call arose in part because of his conflict with the senior pastor.

The court of appeals followed prior Minnesota decisions in determining review would be impermissible. See, Black, 471 N.W.2d at 720, (review of the pastor's defamation claim would require an impermissible entanglement of doctrinal and disciplinary issues); Schoenthals v. Mains, 504 N.W.2d 233, 236 (Minn. Ct. App. 1993)("since examination of the truth of Mains' statements would require an impermissible inquiry into Church doctrine and discipline, the district court did not err in concluding that the defamation claim is precluded by the First Amendment.") - See, also, Farley v. Wisconsin Evangelical Lutheran Synod, 821 F.Supp. 1286, 1290 (D. Minn. 1993)(review of defamation claim would require court to review the reason for termination as well as the veracity of the statements); and Hutchinson v. Thomas, 789 F.2d 392, 396

(6th Cir.), cert. denied, 479 U.S. 885 (1986) (claim involving defamation relates to the plaintiff's status and employment as a minister of the church, and therefore concerns "internal church discipline, faith and organization, all of which are governed by ecclesiastical rule, custom and law".)

Here, the court of appeals in Olson properly determined review was impermissible. To determine the context, validity or truth of the alleged defamatory statement in this case, a court would be required to probe the ecclesiastical relationship between the staff of the Synod, the members of the congregation and petitioner. The court would necessarily review the Synod's motives for speaking with the congregation regarding its pastor. This type of review is not permitted as it would require excessive entanglement barred by the Establishment Clause.

IV. THIS COURT HAS NO JURISDICTION TO HEAR PETITIONERS' ARGUMENTS RELATING TO DUE PROCESS AND EQUAL PROTECTION.

For the first time in this Petition, the Petitioners present an argument that they are being denied due process and equal protection by the Minnesota court's application of the Establishment Clause to their claims. Petitioners claim the dismissal of their claims has denied them access to the court system and thus taken away their ability to enforce contractual obligations.[5] These novel arguments were not presented to the state trial court or the Minnesota Court of Appeals.

This Court has refused, except in rare circumstances, to review issues not raised or addressed below. Illinois v. Gates,

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[5] These arguments have no merit as they relate to the Synod. The petitioners have no contractual obligations with the Synod to enforce in a court of law.

462 U.S. 213, 218-20 (1983); Yee v. Escondido, 503 U.S. 519, 533 (1992). This court should similarly refuse to review any questions raised for the first time in the Petition for Writ of Certiorari.

CONCLUSION

For the reasons set forth above, Respondent The Saint Paul Area Synod of the Evangelical Lutheran Church in America respectfully requests the Petition of R. Ray Singleton and Jeremiah Olson for Writ of Certiorari be denied.

Respectfully Submitted,

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